



The Special Administrative Law Judge found claimant permanently and totally disabled. However, the Judge also found claimant's diabetes was not aggravated by his work-related accident and denied benefits for that condition. The respondent and insurance company requested review of the finding of nature and extent of disability and the claimant requested review of the issues of whether claimant is entitled benefits for his diabetes and the computation of average weekly wage. Those are the issues now before this Board.

#### **FINDINGS OF FACT AND CONCLUSIONS OF LAW**

After reviewing the entire record, the Appeals Board finds as follows:

For the reasons expressed below, the Award of the Special Administrative Law Judge should be affirmed.

(1) The Appeals Board finds claimant is permanently and totally disabled from engaging in substantial and gainful employment as a result of his work-related accident on June 8, 1990. On that date claimant was thrown from the pickup truck in which he was riding and sustained multiple fractures and other injuries including a closed head injury. After the accident, claimant remained in a coma for approximately forty (40) days.

Orthopedic specialist Edward Prostic, M.D., evaluated claimant and believes that claimant has sustained a twenty-five to thirty percent (25-30%) functional impairment to the body as a whole as a result of the injuries sustained. However, Dr. Prostic did not attempt to rate claimant's impairment for removal of the spleen, injury to his lungs, or potential psychological injury. Despite claimant's permanent work restrictions and limitations, he retains the physical ability to perform work in the light and light/medium labor categories.

Although claimant's physical injuries do not render him unable to engage in substantial and gainful employment, claimant's residual mental condition does. The parties presented the testimony of two (2) psychologists, Robert E. Schulman, Ph.D. of Topeka, and Donald E. Schrag, Ph.D., of Wichita. Dr. Schulman believes claimant has sustained brain damage and now experiences memory loss and problems with concentration and perceptual distortion. According to Dr. Schulman, claimant is now unable to work because he is unable to perform goal directed activities and unable to associate goals with the activity he is doing at the moment. On the other hand, Dr. Schrag believes claimant has minimal brain damage, that claimant is malingering to some extent but not totally, and that claimant has somatoform disorder. Dr. Schrag described somatoform disorder as the over-exaggeration of the extent of his injuries.

The Appeals Board finds Dr. Schulman's testimony to be the more persuasive. Dr. Schulman was initially selected by the insurance carrier to evaluate claimant and saw claimant four (4) times in follow-up. He is board certified in general clinical psychology and forensic psychology, whereas Dr. Schrag is not board certified in any area. Dr. Schulman is also experienced in the evaluation of individuals applying for social security disability benefits. For these reasons, Dr. Schulman's opinion is adopted and the Appeals Board finds claimant is unable to engage in substantial and gainful employment and is, therefore, entitled to permanent total disability benefits at this time.

(2) The Appeals Board agrees with the Special Administrative Law Judge that claimant is not entitled to benefits for his diabetes. Before the accident claimant's diabetes was

controlled by an oral agent. While in the hospital, claimant received an insulin drip. For approximately six (6) months after leaving the hospital, claimant required no insulin, but then experienced an increase in blood sugar and became insulin dependent.

Regarding the issue whether claimant's diabetes was permanently aggravated by the accident, the Appeals Board finds the explanation of Ernest R. Schlachter, M.D., convincing and persuasive as he is more definite in his opinion and analysis than that of Dr. Borgendale. Dr. Schlachter is a physician experienced in the care and treatment of diabetics. He believes claimant is now insulin dependent because of the natural progression of the disease process and also that there is no relationship between claimant's present diabetic condition and the accident. Although claimant attempts to make a great deal about his acute pancreatic failure when he was in the hospital recovering from his injuries, Dr. Schlachter noted that pancreatic failure is common following severe trauma and occurs in fifty to seventy-five percent (50-75%) of severe burn and major trauma patients. Trauma patients require a high calorie intake to live which requires much insulin which the pancreas is unable to produce.

(3) Claimant raised the issue of average weekly wage and contends the wage should be increased to include an amount that represents the housing allowance respondent provided. However, the record does not contain evidence pertaining to the specifics of this payment and, therefore, the Appeals Board adopts the average weekly wage of \$440.00 that the Special Administrative Law Judge utilized. The Appeals Board agrees with the statement of the Special Administrative Law Judge that an item must constitute an economic benefit before it is to be included in the computation of average weekly wage. Depending upon the facts of each case, lodging and housing allowance may or may not constitute an economic benefit.

#### **AWARD**

**WHEREFORE**, it is the finding, decision, and order of the Appeals Board that the Award of Special Administrative Law Judge William F. Morrissey entered in this proceeding on October 3, 1994, should be, and hereby is, affirmed.

**IT IS SO ORDERED.**

Dated this \_\_\_\_ day of September, 1995.

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BOARD MEMBER

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BOARD MEMBER

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BOARD MEMBER

c: John J. Bryan, Topeka, Kansas  
P. Kelley Donley, Wichita, Kansas

William F. Morrissey, Special Administrative Law Judge  
Philip S. Harness, Director